IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 310

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY,

Petitioner,

v.

DONALD S. NASH AND SYLVIA K. NASH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENTS

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Respondents are satisfied with Petitioner's presentation of references to opinions, jurisdiction and Petitioner's Statement.

QUESTION PRESENTED

Whether, in valuation proceedings for land condemned under power of eminent domain, supportive evidence of settlement made by the condemnor with another landowner of a nearly identical lot was admissible, the absence of compulsion having first been established.

REASONS FOR DENYING THE WRIT

The weight of authority in the District of Columbia is that evidence may be introduced as to the price paid by a condemnor for property similar to that in suit. *Washington Home for Incurables v. Hazen*, 70 F.2d 847 (C.A.D.C.); *Hannan v. United States*, 131 F.2d 441, 445 (C.A.D.C.).

1. *Hannan* established the principle, since consistently followed by the courts of this jurisdiction, that such evidence is admissible upon the condition that it must be shown that the purchase must have been made without compulsion, and that it is the duty of the trial judge to determine as a preliminary fact whether or not the purchase by the condemnor was without compulsion. Judge Stevens, dissenting on other grounds, stated:

> "Since the law with respect to the duty of qualifying proffered evidence of purchases of other similar property by the condemnor is for the first time made certain in this jurisdiction in the instant decision it seems to me harsh to deny to the appellants the opportunity of introducing the evidence proffered if they can qualify it. That they can qualify it would seem hardly doubtful because the circumstances under which a condemnor would be under compulsion must be most unusual—since if a condemnor cannot purchase at a reasonable price he is at liberty to take the property by condemnation proceedings."

Petitioner argues that its "unique" requirements in the purchase of land require the exercise of eminent domain powers to protect against exorbitant prices. Respondents do not contend otherwise. It would be grossly unfair to the condemnee, however, to couple the eminent domain power to a power to exclude from consideration as comparables all other purchases in a project area. Today's project areas are broad, some extending for many square miles. A rule prohibiting the introduction into evidence of comparable land within the project area could virtually eliminate from consideration all true comparables and place

the landowner completely at the mercy of the condemnor's appraisal testimony.

2. The thrust of one of Petitioner's arguments seems to be that unless the rule established in this jurisdiction by the *Hannan* case is overturned, the government will be reluctant to pay a higher price for small tracts and will be forced to try more condemnation cases in the course of its land acquisition program. On the other hand, the prospect of throwing a cloak of secrecy over prices paid by the government for neighboring comparable tracts would be a bleak one indeed for the condemnee-landowner. In the instant case, it would have resulted in the Respondents being denied the right to show that the government settled with a neighboring landowner of a smaller but identically zoned tract for a price of almost three times per square foot that which it deposited for Respondents' tract. It would follow from Petitioner's argument that the premium paid for the neighboring tract was paid to avoid the "delay and cost" of trial. Where the avoidance of delay and cost of trial results in payment by the government of three times what its appraisers consider fair market value, it would appear that it were high time the government re-examine its land acquisition policies.

The lower Court was satisfied that the price paid by the government for the neighboring tract was done without compulsion, and that it was admissible on the question of fair market value of Respondents' tract.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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